

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

CHARLES LEE THORNTON,
Plaintiff,

vs.

No. 4:07-CV-79 CDP

THE CITY OF KIRKWOOD,
Defendant.

PRESENT: The Honorable Catherine D. Perry, Presiding
ATTORNEY FOR PLAINTIFF: Plaintiff appears pro se
ATTORNEY FOR DEFENDANT: John M. Hessel

Motion for Temporary Restraining Order
January 18, 2007

TERI HANOLD HOPWOOD
Registered Merit Reporter
Thomas F. Eagleton Courthouse
111 South Tenth Street
St. Louis, Missouri 63102

1 THE COURT: We're here in the case of Charles Lee
2 Thornton versus City of Kirkwood. This is case number
3 4:07-CV-79. Mr. Thornton is here representing himself, and
4 the City of Kirkwood is not represented. This case was just
5 filed not long ago, and Mr. Thornton is seeking a Temporary
6 Restraining Order without notice, and a preliminary and
7 permanent injunction. So Mr. Thornton, tell me what it is you
8 want this Court to do and why you think you're entitled to it.

9 MR. THORNTON: Yes, Your Honor, I would like for
10 this Court to allow me to speak at the City Council meetings.
11 There is protocol of a three-minute time limit to speak, and
12 it's an open mike, and you can say and address any issue that
13 you would like during this three-minute time session.

14 They have denied me this right to speak in the three
15 minutes by stopping me from speaking after three seconds of
16 speaking, and once after five seconds of speaking, not
17 allowing me to get into the detail or any part of my speech
18 which only lasts at the most three minutes.

19 I was handcuffed and physically, forcefully removed
20 from the City Council meetings, and in the paperwork that I
21 did not bring, but they had an article in a public -- in their
22 private meeting to try to have me banned from speaking at the
23 City Council meetings, but they said that would be a little
24 too harsh to ban me, ban me from coming to the meetings all
25 together, but they said that would be a little too harsh, so

1 they attempted to just allow me to come to the meetings but
2 not allow me to speak.

3 THE COURT: What is it you want to say and why are
4 they so upset about what you're saying? Just background so
5 I'll understand.

6 MR. THORNTON: They issued me over 150 tickets for
7 construction equipment, and because of that, I have the
8 evidence which because I'm doing it pro se, because it did
9 cost the city over \$500,000 for all of these issues, which I
10 know about because --

11 THE COURT: I just wondered what sort of general --
12 that tells me the general topic.

13 MR. THORNTON: Yes.

14 THE COURT: You're asking me to enter an injunction
15 to tell the City Council that they have to allow you to speak
16 for three minutes?

17 MR. THORNTON: Correct, that's what they are
18 already -- the protocol states that, but they are not letting
19 me do it, and so I'm just asking this Court to allow me to do
20 what the United States Constitution has granted me, which is
21 allowing me to speak during the allotted time that they have
22 allotted for everyone, not just me. I'm not even asking for
23 minutes past the three minutes, I'm just asking for them to
24 allow me to use my three minutes that they have given every
25 other citizen of the United States in Kirkwood.

1 THE COURT: Okay. Well, I think you are raising a
2 federal question, although not as well as you might if you had
3 a lawyer, so I think there is a federal question issue here
4 since you are alleging that your First Amendment free speech
5 rights have been deprived, violated by the City. But, why --
6 explain to me why we should not require you to give notice to
7 the City about this request, and also tell me what happened in
8 St. Louis County. You went to St. Louis County Court already.

9 MR. THORNTON: The meeting is tonight, Your Honor,
10 and because I've been arrested and handcuffed, and it does a
11 great damage to one's esteem and their status in the community
12 when you are handcuffed and removed from a Council meeting

13 THE COURT: I'm asking you about notice, why we
14 can't give them notice. Many times -- have you called them
15 and told them you're coming to court? Have you asked the city
16 attorney, you know -- do they have a city attorney?

17 MR. THORNTON: Yes, they do. I've been discussing
18 this issue with them, and asking them to stop denying my civil
19 rights to come and speak at the meeting, and they constantly
20 refuse by arresting me, and the meeting is tonight, Your
21 Honor. With the time of trying to do anything as far as to
22 get a notice and have them come to hear anything as far as not
23 being able to speak tonight, the meeting is tonight.

24 THE COURT: Well, we have got telephones. Don't
25 you know -- I mean, you can call them on the phone. Notice

1 doesn't -- notice for an emergency request like this can be
2 whatever is practical under the circumstances, and your memo
3 said you thought it would take 15 days, but I think it would
4 take one phone call to say -- I mean, do you know who the city
5 attorney is?

6 MR. THORNTON: Yes, John Hessel.

7 THE COURT: He practices where, downtown or
8 somewhere?

9 MR. THORNTON: 500 North Broadway.

10 THE COURT: He's less than a mile from here.

11 MR. THORNTON: My 15 days is the part that I
12 believe was being heard, the decision.

13 THE COURT: Why don't you want to just call
14 Mr. Hessel and say, "Get down here to Federal Court, we're
15 having a hearing, I'm asking for relief," so that both sides
16 could be represented here today?

17 MR. THORNTON: Your Honor, I did not have that
18 understanding because the understanding that I believed was
19 that it would have to take place several days, and the meeting
20 was tonight, and that's why I filed it first in St. Louis
21 County, and it was denied, but that was just yesterday, and so
22 I went today to try to have it -- so I would not be blocked
23 from speaking tonight.

24 THE COURT: Well, yesterday did you go to a judge?

25 MR. THORNTON: Yes.

1 THE COURT: In St. Louis County?

2 MR. THORNTON: Yes, Division 38.

3 THE COURT: And the Judge, you attached to your
4 complaint an order. I can't quite read it. It didn't scan
5 very well, but I think it says we're denying it because we
6 think you must give notice to the opposing party. Is that
7 what they said?

8 MR. THORNTON: That's exactly what it says, Your
9 Honor, which in my opinion, I believe that that would cause --
10 well, and the lady, the clerk's attorney stated that this
11 would guarantee that it would not go through in the time
12 needed for tomorrow, which is now today, and therefore, that
13 would cancel my right to be able and have the freedom of
14 speaking today because she said it would not be able to be
15 done because of the notification and everything else, and so
16 my intent was just to have the freedom and right to speak
17 tonight, and they informed me that that would not happen in
18 St. Louis County because of the notification.

19 THE COURT: Okay. Well, here is what I'm going to
20 tell you. Under Rule 65, it says that you have to have
21 specific facts shown by affidavit or verified complaint. You
22 could testify here today and we could put you under oath, but
23 then the applicant's attorney certifies to the Court in
24 writing the efforts, if any, which have been made to give the
25 notice and reasons supporting the claim that that notice

1 should not be required.

2 In other words, if a Temporary Restraining Order is
3 going to be issued without notice, there has to be a good
4 reason, and usually that reason is something along the lines
5 of it's an emergency, and it's going to happen in the next ten
6 minutes, or hour, and I don't have time to pick up the
7 telephone and call them, or I think if I give them notice,
8 they will destroy the evidence, or they will do something
9 to -- I'm trying to get somebody to stop from cutting down a
10 tree, and if I call them and give them notice and tell them to
11 come to court in an hour, they will cut down the tree before
12 they come to court, that kind of thing. You don't have any of
13 those things here, so I am going to deny your request for
14 Temporary Restraining Order without notice, but also without
15 prejudice.

16 You can get Mr. Hessel or somebody from the City on the
17 phone, tell them that you have filed this, and that I've said
18 I'm available for a hearing. I have several matters at 1:30,
19 and the last thing I believe is at 2, so I could hear this
20 issue at 2:30, and if you come back, what I'll do is I'll just
21 set a hearing for 2:30 on the assumption that you wish at that
22 time to come back and renew your request for a Temporary
23 Restraining Order.

24 You can call Mr. Hessel or the City and tell them that
25 you filed this motion and these papers, and you're up here and

1 I've said I will hear it at 2:30, and then they'll know, and
2 if you want to have a lawyer come down here and respond, they
3 have a right to do that, and I won't be doing it ex parte, but
4 it would still happen before tonight's meeting because I think
5 that this is the kind of thing where they ought to be heard,
6 and you know who they are. There is no reason you can't try
7 to notify them and tell them we have a hearing. If they say,
8 "Well, I don't care, I'm not going to come," then we'll go
9 forward without them here, but we have to give them some
10 chance to appear and be represented.

11 MR. THORNTON: I was misunderstanding of it, Your
12 Honor.

13 THE COURT: I'm denying it right now, but it's
14 without prejudice, and I'm resetting a hearing at 2:30, and at
15 that time you can ask me to undo the denial. Now if that
16 doesn't work out and you change your mind and you don't show
17 up at 2:30, the denial will just remain and this will be the
18 end of the motion, okay?

19 MR. THORNTON: I'll be back, Your Honor.

20 THE COURT: I had a feeling you might be. I'll see
21 you then. At that time you need to let me know what you've
22 done to try to reach them, and so you need to -- you know, if
23 Mr. Hessel isn't available, you need to ask can he be reached,
24 and if he can't, then who else can speak on behalf of the City
25 of Kirkwood, and you can call the City offices. I mean, there

1 are a variety of things you can do, but we want to do that as
2 soon as possible, and so we'll do this at 2:30, okay?

3 MR. THORNTON: Thank you.

4 THE COURT: Court is in recess.

5 (A recess was taken.)

6 THE COURT: We are again here in the case of
7 Charles Lee Thornton, plaintiff, versus the City of Kirkwood.
8 This is case number 4:07-CV-79. Mr. Thornton was here earlier
9 today and he filed this suit and sought a Temporary
10 Restraining Order without notice, and I denied it without
11 notice, but also without prejudice, and told him he needed to
12 attempt to contact the City of Kirkwood to see if they wished
13 to be represented, and Mr. Hessel, you are here, so it's John
14 Hessel for the City of Kirkwood?

15 MR. HESSEL: It is, Your Honor.

16 THE COURT: Are you the City Attorney normally?

17 MR. HESSEL: Yes, Your Honor, since 1985.

18 THE COURT: I'm glad to see you here.

19 Mr. Thornton, go ahead and step back up here to the lectern,
20 and although you told me earlier today, the defendant was not
21 represented at that time, so I'll ask you again to state what
22 you're asking for this Court to do, and why you think you're
23 entitled to that relief.

24 MR. THORNTON: Yes. Thank you, Your Honor. I'm
25 asking the Court to allow me my constitutional rights of free

1 speech during the City Council meetings. They are held twice
2 a month. During this time, the public hearing portion of the
3 meetings, there is no time limit to speak in reference to the
4 issue on the table. During the public comments section, there
5 is a three-minute time limit, and there you must --

6 THE COURT: What's the earlier section?

7 MR. THORNTON: Public hearing, and that is on a
8 particular issue, where you must address that issue, but there
9 is no time limit to speak. The three-minute public comment
10 section is totally open for any form of communication during
11 the allotted three-minute time.

12 The City has interrupted and arrested me during these
13 occasions, and I'm asking the Court to grant this temporary
14 injunction stopping the City from violating my civil rights
15 during these times. I have issued to the City of Kirkwood,
16 the City Attorney was present at the time, this document. Can
17 I bring you this copy?

18 THE COURT: If you'll hand it to the court security
19 officer, he'll provide it to the clerk.

20 MR. THORNTON: It's words because they did not have
21 -- or I'm sorry, they may have had, but they did not enforce
22 the three-minute time limit, so therefore other people ran on
23 four minutes, 10 minutes, 15 minutes. When I started speaking
24 and I wanted to run on, they decided to enforce the
25 three-minute time limit, so this creates me to now be creative

1 and put everything I need to say and write it down, and I
2 can't afford to stutter or have any brain lapse because I only
3 have three minutes. So in this presentation, I must prewrite
4 it, and then practice it so I can present it. So I ask that
5 if these words that I choose to use in my presentation, if
6 they violate my civil rights in the free speech, please
7 acknowledge them to me in writing or even say it from the
8 Mayor or City Council or even Attorney Hessel, tell me and I
9 will not use them in my presentation, but if you do not tell
10 me not to use any words I have on this sheet of paper, then I
11 will have to believe that my constitutional rights, because
12 they are in the Bible and the dictionary, that I am allowed to
13 use these words.

14 I believe I'm not -- when I gave these documents and
15 others to Attorney Hessel, who was present at City Council
16 meetings, he immediately turned around and put them in the
17 trash can in the City Council meeting. This did upset me, but
18 as long as I was able to speak, I had no problems with their
19 actions.

20 THE COURT: Hold on. What you've given me is a
21 one-page sheet, and it says at the top, "Webster's Dictionary
22 definitions," and it has some words, "ass, fool, damned,
23 idiot, jack ass, monkey, signified, hell," and there is a
24 definition for each one of them, and then it says, "Please
25 read over the words and their definitions. Cross a line

1 through the word or words from the Holy Bible and the
2 Webster's Dictionary which you believe is not guaranteed by
3 the Constitution, being the First Amendment right of free
4 speech. Please sign your name and title so as no
5 misunderstanding will be had." And then there is a note, "If
6 you choose not to respond, this will be understood as my right
7 to use freely these words in my presentations," and there is a
8 signature, blank, where it says signature, colon, and a blank,
9 and title, colon, and a blank, and it says Kirkwood, Missouri
10 City Council meeting, date, blank. So you're saying you want
11 the City to have to sign this, or I don't quite understand
12 what you're telling me you want.

13 MR. THORNTON: Yes, I read it and I passed it out
14 to the Mayor, the City Council, and the City Administrator and
15 Attorney Hessel, and I said, "If you have a problem with the
16 words that I have used in the past, or choose to use, these
17 are some of the words that I feel you may have an issue with,
18 so please acknowledge these as being words that I cannot use
19 legally in this proceeding as far as the City Council meeting,
20 and I will not use them," but they did not respond at all to
21 my asking this, and no one signed and got back to me.

22 Once again, some of the documents I gave Attorney
23 Hessel, he did turn around and put it in the trash can without
24 even looking at them in the City Council meeting, and then the
25 Mayor himself turned the document over, upside down, and

1 pushed it away from him and refused to even read it, and these
2 are just what they do. But I didn't have a problem with that
3 because I was speaking at the time, but now they have to get
4 more creative, and they did have in the newspaper article,
5 which I didn't bring, it states that they wanted to ban me
6 from coming to all -- well, they suggested banning me from
7 coming to all City Council meetings, but they talked about it
8 and decided that that was considered -- that was a little bit
9 too harsh, so they decided to allow me to -- well, another
10 action was allow me to come to the meetings, but allow me not
11 to speak, and they also said that that would be inappropriate
12 at the time and they would not lower themselves to my level.

13 However, allowing me to come to the meetings and stand
14 up and say any words on this paper that I asked them if there
15 was a problem I would not use, and then stop me and arrest me
16 for using any of the words, which I clearly asked because I
17 wanted to follow their protocol which has changed so many
18 times that you have to kind of read it before trying to -- I
19 dare say, try to keep up with trying to stop me from trying to
20 speak because each time it's a protocol change on their own
21 paperwork after I did something already, so I can't do it
22 again, and now the latest change that they made was that no
23 one can speak for more than ten times on any issue that's been
24 heard already before the City Council.

25 Now, it just so happens that only discriminates against

1 me. I'm the only one in the State of Missouri or in the
2 United States, for that point, that has presented myself to
3 the City of Kirkwood with an issue that they have refused to
4 respond to, and so I just want this body to acknowledge my
5 constitutional rights to speak. I don't want extra time, I
6 want three minutes that everyone else is allowed to speak

7 THE COURT: Okay, so you're asking that I order
8 them to allow you to speak tonight at the meeting, is that
9 what you're doing?

10 MR. THORNTON: Yes.

11 THE COURT: Well, you know, I'm still having
12 trouble understanding what it is you want to speak about,
13 because the City Council, it seems to me I shouldn't just
14 enter an order saying anybody can get up and talk about
15 anything. I mean, doesn't it have to have something to do
16 with the business of the City?

17 MR. THORNTON: No, ma'am. Well, yes, ma'am. One,
18 the public hearing does. It has to directly address what is
19 being spoke of at the public hearing section, which has no
20 time limit of speaking, but the other one is the public
21 comment. It has no control over what is said during the
22 public comment time, but it does have the regulation of three
23 minutes.

24 The other one, like I said, that's trying to stop me
25 from speaking all together, would be that I've spoke on it ten

1 times, so they can't say we're not going to let him speak,
2 they are saying, "Well, he can't speak on that any more
3 because he spoke on it ten times," which is still in effect
4 saying I can't speak any more on the issue. The public
5 comment section has no limitation on what you can speak of.
6 It's totally open.

7 THE COURT: Okay. And you believe they are not
8 going to let you speak if you get up and try to speak, is that
9 what you're saying?

10 MR. THORNTON: My reputation of being arrested has
11 been destroyed. It is very embarrassing being handcuffed and
12 drug out of a public meeting when relatives and friends and
13 family members are there, and also, the damage it does to the
14 mental state of an individual is very -- is very wrong. So
15 the fear of going in knowing that they can, because they have
16 twice, three times before, the third one was an issue with me
17 coughing, literally choking on a piece of candy, and I was
18 arrested, but that's -- they chose not to -- they said they
19 lost the ticket and chose not to proceed with it, so that was
20 dropped, but the fear of going into a room that is under the
21 United States Constitution, and they call you up to speak, to
22 have a fear of you might say something that might offend them,
23 well, some people are offended because I'm African American.
24 I need not say a word and it can offend some people, but the
25 United States Constitution should guarantee my right to at

1 least speak and not be interrupted and stopped and then
2 handcuffed and removed just because they didn't like what I
3 might have to say. Granted, three seconds or five seconds,
4 that doesn't get into the total basis of my discussion.

5 Now once again, some of words that I use, "jack ass,"
6 and I don't just say, "Mayor, you are a jack ass." What I
7 said is, "The mayor is displaying jack ass-like qualities,"
8 which means that the quality that he is displaying is very
9 stubborn and not listening what I have to say. When I'm
10 speaking to you, if you choose to turn your back to me, and
11 the Mayor and Attorney Hessel literally turn and looked, and
12 the Mayor was reading, me I have to still continue my speech,
13 realizing that you're not caring one word what I'm saying, yet
14 I still only have three minutes to say it.

15 But when they stop me from even the three minutes from
16 speaking because they don't want to even hear what I have to
17 say, that is the content-based discrimination because they
18 won't even know what I'm going to say. One time, like I said,
19 I was arrested after saying, "Jack ass, jack ass, jack ass."
20 Now they don't know --

21 THE COURT: You think it's your position that I
22 should order them to let you speak for three minutes even if
23 what you're going to stand up and say for three minutes is,
24 "Jack ass, jack ass, jack ass," three minutes worth of that,
25 it would be a violation of your constitutional rights if you

1 didn't -- I mean, I'm trying to understand what you want to
2 say.

3 MR. THORNTON: I do not have the speech ready for
4 tonight, but my question is if it's only three minutes,
5 sometimes no one is there, I'm the only speaker, so that's
6 only three minutes, and sometimes, depending on the issue,
7 like the smoking ban, there was a lot of people there for
8 that, but sometimes it's not that many people there, so only
9 three minutes. If I choose to say words that are legally
10 protected by the United States Constitution, I think I should
11 be able to say them, but I'm not going to waste my time in
12 three minutes to just say, "Jack ass, jack ass, jack ass,"
13 without some explanation, and why I am saying that they are
14 displaying these characteristics, and that's the problem.

15 I'm saying that they are displaying these
16 characteristics, and they don't want to hear it any more, so
17 they are trying to create a way to stop me, knowing I'm the
18 only individual that has spoken more than ten times on a
19 situation, and they can say a blanket "no one can speak ten
20 times any more," but no one even wants to speak ten times.
21 I'm the only individual that's before the City Council that
22 has an issue that I want to bring up.

23 That's why without this order, they can still at any
24 time stop me and violate what I believe is my constitutional
25 rights of free speech, even if I choose to say, "Jack ass,

1 jack ass, jack ass," for three minutes. If it's a word that
2 is in the dictionary and in the Bible that is legally
3 acceptable to use, I think I should be able to use it, but I
4 guarantee you I'm not going to waste my time to say, "Jack
5 ass" for three minutes and then go sit down and think that I
6 got my point across.

7 THE COURT: Okay, have a seat now and let me hear
8 from Mr. Hessel and see if he wishes to make any response to
9 the request for Temporary Restraining Order.

10 MR. HESSEL: Thank you, Your Honor. First off, let
11 me clarify. The City of Kirkwood has never refused to allow
12 Mr. Thornton to speak. He has always been afforded the
13 opportunity to speak.

14 Now, I will tell you that Mr. Thornton has appeared at
15 almost every Council meeting, I'm estimating by this, for the
16 last ten years, probably longer. In many instances, he has
17 been threatening, he has been rude, he has been using abusive
18 language. He has been wasting the Council's time.

19 For example, Your Honor, you used the question as to
20 whether or not you could stand up there for three minutes and
21 say, "Jack ass, jack ass." He stood up there for three
22 minutes and said, "Because no one listens to me and you're all
23 a bunch of jack asses, I'm going to speak in donkey-ese," and
24 went, "hee-haw, hee-haw, hee-haw," for three minutes, as an
25 example. That's the kinds of comments that Mr. Thornton has

1 been making at the public meetings.

2 We have had citizens who have complained because they
3 have real business to attend to at that Council meeting, and
4 so the Council decided to adopt guidelines after putting up
5 with Mr. Thornton for well over ten years. Those guidelines
6 are such that if we have a public hearing, anyone can speak on
7 a matter related to the public hearing.

8 Now Mr. Thornton has identified two instances where he
9 was stopped from speaking. The first one involved a public
10 hearing because he got up and he made comments not related to
11 the public hearing, which was someone asking, I can't remember
12 if it was Bethesda Home or one of the other nursing homes in
13 town, was asking for a rather significant expansion to their
14 building, a five to ten-million-dollar project, and
15 Mr. Thornton thought it was appropriate for him to stand up to
16 question them whether or not they realized that if they were
17 African American and if they were engaging in certain
18 construction activities, that they might be arrested.

19 Just as a matter of background, Your Honor, this has
20 gone on because Mr. Thornton decided that he was going to
21 ignore the rules with respect to his demolition company, and
22 he was cited and convicted for well over 100 violations in the
23 Municipal Court and in the Circuit Court of St. Louis County.
24 Since that point -- and he was fined over \$30,000, and the
25 City has made no attempt to collect that money from him. We

1 have said, "You just go on and go about your business and do
2 it in a meaningful manner, and we'll let it go."

3 Unfortunately, however, Mr. Thornton has never let it
4 go, and he comes back at every Council meeting, and he accuses
5 the Director of Public Works of being a liar, and accuses him
6 of perjury, accuses others of complicity in that whole
7 conspiracy, including myself, and people that work for me as
8 the prosecuting attorney. He has picketed my office, picketed
9 other offices of Council members, accusing them of racial
10 bigotry, and he comes up at these meetings, and that's his
11 theme, is that there is racial bigotry, and the Council has
12 allowed him to carry on with those accusations. If they are
13 in the public hearing context, then he has been asked to stop
14 and address the issue before the City Council relating to the
15 public hearing. On the one occasion, he refused to do that,
16 so he was asked to sit down. He refused to sit down, he sat
17 down, and then laid down in the middle of the Council chamber.

18 On the second occasion, he got up to speak, and I don't
19 remember the precise words that he was using, I believe that
20 he was calling members of the Council an ass, but my memory
21 isn't that good, Judge, as to precisely what it was, and some
22 members of the City Council said, "Mr. Thornton, I wouldn't
23 let you use that language in my home, don't use it here," and
24 he proceeded to use it again and again, and the Mayor stopped
25 him and said, "Mr. Thornton, if you have something to address

1 to the Council that's particularly relevant, address it.
2 Otherwise, take a seat," and he proceeded with the same litany
3 of them being asses, at which time he was stopped, asked to
4 take a seat, and he did precisely the same thing, sat down,
5 and then laid down in the middle of the Council chamber, for
6 which he was arrested and convicted for peace disturbance.

7 That's what has taken place. I suggest to you, Judge,
8 from the legal standpoint, he is asking you to issue a
9 Temporary Restraining Order based upon events that occurred on
10 May 18th and June 15th of 2006. We're now into January, as we
11 all know, of 2007. That's six months. Within that six
12 months, although Mr. Thornton hasn't appeared at every Council
13 meeting, he has appeared at Council meetings, and he has
14 spoken, and he has been entitled to speak his three minutes.
15 He has not been stopped.

16 I suggest to you that there is no immediate irreparable
17 harm. There is no evidence whatsoever, even by his
18 allegations today, that the City of Kirkwood intends to stop
19 him as long as he complies with the guidelines and the decorum
20 that everyone else has to comply with, and that's in his
21 fears, he might run afoul of that, as he has in the past, but
22 Your Honor, that's the risk that he runs, and that doesn't
23 give rise to a Temporary Restraining Order.

24 We are prepared, as we have been for well over ten
25 years, to deal with Mr. Thornton on an individual

1 case-by-case, or I should say council-meeting-by-council
2 -meeting basis, and if he wants to come up and speak under
3 citizen's comments, as everyone there is, he is limited to
4 three minutes, and he is limited to addressing something that
5 has some relevance within the City, and Mr. Thornton is
6 correct. We did adopt, as part of a guideline, that if you
7 have spoken on the same matter for ten times, unless that
8 matter is still pending before the City Council, then you're
9 being repetitious, and there is no reason for us to just allow
10 people to carry on even if it's for three minutes over and
11 over and over, so we established that rule.

12 Candidly, he has tried to -- he has pushed the envelope
13 on that issue. I don't know whether or not he intends to
14 speak on the same matter, but he to the best of my
15 recollection, he has not been stopped for violating that
16 guideline.

17 In any event, Your Honor, so that you understand also,
18 we have been asked to identify the words that he can and
19 cannot say and sign off on that piece of paper. The problem
20 with that, of course, is that it's all about the context. If
21 you're using particular words in the proper context, they are
22 not necessarily vulgar, what he is saying, but it's the
23 context in which he's saying them.

24 As you may recall, Judge, in your prior life, Bob
25 Hoemeke hired me, and I was with Bob Hoemeke for years. As

1 you know, I am an advocate of the First Amendment on behalf of
2 the St. Louis Post Dispatch, Belleville News Democrat, and
3 most other media clients in town, so I understand and
4 appreciate someone's right to speak, and as Bob Hoemeke would
5 say if he was here, you know, "It's the harsh words that need
6 First Amendment protection." I'm all for that. Yet, you
7 still have to speak in the proper time, place, and manner
8 context.

9 So, we're here because Mr. Thornton has decided to
10 ignore proper time, place, and manner context of his speech on
11 at least two occasions. But again, more significantly to the
12 issue, there is no evidence whatsoever to suggest that if
13 Mr. Thornton wants to speak this evening that he will be
14 precluded from speaking. I suggest to you quite to the
15 contrary, he will be permitted to speak.

16 Now, again, if he interrupts a public hearing as he has
17 done in the past, he may be stopped, and if he respects the
18 wishes of being stopped and sits down, that will be the end of
19 it. Similarly, if he decides to address the Council under
20 citizen's comments, he's entitled to do that, as long as it's
21 relevant to a matter relating to the City, or something that
22 even that the City Council can address, and I tried to point
23 out to Mr. Thornton in the past ten years that if he thinks
24 that the judicial system failed him and that he was wrongfully
25 convicted, the City Council can't help him. Although he wants

1 to continue to address it before the City Council, they cannot
2 help him.

3 He has brought lawsuits in the Circuit Court, the Court
4 of Appeals, Missouri Supreme Court on different occasions, and
5 each one of those, the Eastern District of Missouri, the
6 Western District of Missouri, and I think he also tried in the
7 Eighth Circuit Court of Appeals. We have tried to address all
8 of his complaints through the judicial system rather than
9 through legislative Council process, but if he still wants to
10 come up and speak, we'll listen to him again, as long as he
11 complies with the guidelines that have been established.

12 THE COURT: Mr. Thornton, may I hear any response
13 you wish to make?

14 MR. THORNTON: Yes, Your Honor. Attorney Hessel is
15 very generous with the time that I appeared before the City of
16 Kirkwood. The issue of the tickets that I received that I
17 thought I was wrongly given started in 2000 to 2001, so during
18 that time, it was the court proceedings. I didn't start going
19 to the City Council meetings until about 2002, when I started
20 addressing the City, asking them to stop the one individual,
21 the Public Works Director, from submitting these fraud
22 documents and harassing me. So from 2002 to 2000 -- just
23 turned 2007, it stretches it even as five years, so he's kind
24 of doubled that.

25 The documents I'm showing the City of Kirkwood, it

1 clearly states in their, I guess their laws, the City laws, I
2 may not be using the right terms, but there are guidelines
3 that if an employee is found guilty of fraud, perjury, or
4 committing any illegal act, they will be removed from office.
5 The documents I'm showing Attorney Hessel and everyone clearly
6 shows that he did commit fraud. They are refusing to
7 acknowledge it, and therefore, not having to take action
8 because they are silent. When I even ask them a question, no
9 one says a word, a simple question in reference to based on
10 the protocol, because there was a section in the protocol that
11 said that of course public comment was three minutes, and it
12 said for public hearing, follow the said protocol as public
13 comment. To me, that means the public hearing will be three
14 minutes also, and I asked them about the clarification, and
15 the Mayor, Attorney Hessel, and the City Administrator and all
16 the City Council members refused to respond to a simple
17 question for my understanding so I can stay within that time
18 limit.

19 So Attorney Hessel was also incorrect as far as me
20 calling them, "You all jack ass, jack ass, jack ass." I don't
21 have the time to stand up there and just call them jack asses
22 without my presentation. I only stated that's what I said in
23 a three-minute comment. I was stopped at three seconds. I
24 said, "Jack ass, jack ass, jack ass," and what I wanted to say
25 was now this is what the City Council, the Mayor, Attorney

1 Hessel and everyone else want the City to believe, that's all
2 I'm talking about, but I'm talking about, and then I went into
3 my presentation. I did not get in to say any of that. I
4 said, "Jack ass, jack ass, jack ass." The Mayor stopped me
5 and said, "You're going to have to sit down," and I said,
6 "Well, I didn't get to finish. They said no, called the
7 police over, and I was arrested. No, Your Honor, I did not
8 stand up and say, "Jack ass, jack ass, jack ass."

9 Now the first time when I did give my "jack ass"
10 presentation, when I realized that they were not listening to
11 the evidence that I was presenting them, and I informed them
12 that it appears that they are having a stubborn type stand,
13 and then maybe I should talk in jack ass-ese, and so for the
14 rest of that time, that was only maybe a minute left, because
15 I still gave my presentation first, I did speak in jack ass,
16 which they, I guess, understood, I don't know, but my point is
17 if I can't speak on the words and then because there is a
18 three-minute time limit, if I have to prepare a speech and
19 they consider just to stop me based on the word, then that
20 destroys the speech, time limit to even make the presentation.

21 Now Attorney Hessel was wrong based on me not being
22 affected in the last City Council meeting because the Mayor
23 did stop me from the presentation that I had because he said
24 that I had presented it before, and that they just didn't want
25 to hear it, so he was wrong because I have been interrupted on

1 several occasions at the City Council meetings, but the reason
2 I'm here, I should not be denied a right to speak, and I
3 understand the contents in which Attorney Hessel is referring
4 to, and therefore, I stay within, but for me simply to say,
5 "Jack ass, jack ass, jack ass," and then not allow me to go
6 any further, and then fabricate that I just started yelling,
7 "Jack ass, jack ass," like I have nothing else to do is wrong.

8 Now, I even went as far as before my speech, I took my
9 time to pre-empt them to let them know I was going to say the
10 word "nigger," and I said, "I'm going to say the word 'nigger'
11 in my presentation," and so what I said was the word "nigger"
12 has been used to diminish and degrade the African American
13 while they were slaves a long time ago, and I choose not to
14 use the word, and any time anyone treats anyone in that manner
15 I believe is wrong.

16 So, but even with me saying, "Jack ass, jack ass, jack
17 ass," and then stopping me violates clearly my rights of
18 speaking because they have no idea what I'm going to say, and
19 Your Honor, I just -- it's the time it takes to present and
20 have the City Council constantly create ways to stop an
21 individual from speaking clearly on this civil rights
22 allotment of time that they have already set aside, I just
23 think is wrong, Your Honor, and I'm just asking the Court to
24 give me the opportunity to speak tonight.

25 Yes, I have a strong possibility they allow me to speak

1 tonight, even if I say "jack ass" because I've been here now,
2 but they meet twice a month, Your Honor, so that does not
3 guarantee until another time is done that they are going to,
4 you know, stop arresting me for just saying words because they
5 don't allow me the time to even speak to even explain the
6 words. I just believe that the Constitution is supposed to
7 uphold my right to speak, and yes, no, I've never cursed them
8 out. They might not like what I have to say. Well, that's
9 understandable. I don't like what they have to say sometimes,
10 but I still want to have my opportunity to speak and be heard
11 based on the United States Constitution.

12 THE COURT: All right. Well, in order to receive a
13 Temporary Restraining Order from me, you would have to show
14 that you're likely to succeed on the merits of your case, that
15 you are threatened with immediate and irreparable harm, that
16 the harm to you outweighs any harm to the other side, and that
17 the public interest favors entering the injunction.

18 I conclude based on everything you've provided, and
19 although this was not sworn testimony, I'm considering it as
20 if it were evidence, that you have not shown either that
21 you're likely to succeed on the merits or that you are
22 threatened with irreparable harm, and I'm going to deny the
23 request for a Temporary Restraining Order.

24 I don't know -- I don't see any threat that you will
25 not be allowed to speak tonight, and I don't believe that

1 there is any necessity to protect any constitutional rights
2 for me to enter this extraordinary remedy, and that's what a
3 Temporary Restraining Order is, it's an extraordinary remedy,
4 and you have not made the showing necessary to get that. So,
5 I'm going to deny your request for a Temporary Restraining
6 Order.

7 Now, I do -- you have filed your lawsuit, and you've
8 asked for a preliminary and permanent injunction, and that
9 lawsuit can go forward, and the case was just opened earlier
10 today, so let me just ask you, did you pay the filing fee of
11 \$350?

12 MR. THORNTON: Yes, I did, Your Honor.

13 THE COURT: Now what you have to do is serve
14 process on the City. Even though Mr. Hessel showed up for
15 this emergency hearing, that's not the same thing as saying
16 they have been served, so you have to follow the Federal Rules
17 of Civil Procedure, if you want your case to proceed, and
18 you're required to do that as soon as possible, so you need to
19 proceed in the way -- there are various ways of achieving
20 service, but you'll need to serve them.

21 Once a lawyer has entered an appearance, and if an
22 answer is filed, I would set the case for a scheduling order
23 and we can schedule the rest of the case, but I will wait to
24 do that until the case has been served on the defendant. I
25 am, though, at this time denying the motion for Temporary

1 Restraining Order, and then the case will proceed as a normal
2 case.

3 I will enter an order to that effect shortly. So it
4 will be mailed to you. Please, if you're going to represent
5 yourself in this case, and there are lawyers who take First
6 Amendment cases, Mr. Hessel being one of them, but I'm not
7 going recommend you try to hire him, but there are lawyers who
8 take First Amendment cases. There are organizations that work
9 to protect First Amendment rights, including people like the
10 American Civil Liberties Union. I don't know if you have
11 approached any of those advocacy type organizations or lawyers
12 who handle this kind of case to see if someone would take your
13 case, but you are free to do that if you want to. Obviously,
14 you are allowed to represent yourself, and you have a right to
15 do that, so it's fine with me if you represent yourself. I
16 want you to know that there might be lawyers who will take
17 your case. I don't know. So that is my ruling in this case,
18 and court is in temporary recess.

19 (A recess was taken.)

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REPORTER' S CERTI F I C A T E

I, TERI HANOLD HOPWOOD, RMR, Official Court Reporter
for the United States District Court for the Eastern District
of Missouri do hereby certify that the foregoing is a true and
correct transcript of the proceedings had in this cause as
same appears from my stenotype notes made personally during
the progress of said proceedings.

/S/ Teri Hanold Hopwood, RMR
TERI HANOLD HOPWOOD, RMR
Official Court Reporter